

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

John
118637

FILE: B-205314

DATE: June 8, 1982

MATTER OF: Allowances on account
of adopted children

DIGEST: When a Navy member adopts a near relative who remains with his or her natural parents, the member may only receive increased allowances if he can demonstrate that the adopted child is in fact dependent upon him for support. This requires clear and convincing evidence that the adoption is not merely for increased allowances, and that the member's support provides the child with the necessities of life which would be unavailable without this support.

The question presented is whether a member of a uniformed service who adopts a close relative and contributes substantially to the child's support may be paid increased allowances on account of a dependent when the child remains with his natural parents. A member is entitled to increased allowances on account of the dependent, only if he can show by clear and convincing evidence that the adopted child is in fact dependent on the member for his or her support, maintenance, and education.

This question was asked by the Director, Navy Family Allowance Activity, and was assigned submission number Do-N-1380 by the Department of Defense Military Pay and Allowance Committee.

In the submission we received, there is an example of what is termed a general situation. The example involves an enlisted member of the Navy who is married to a native Filipino. The member has legally adopted his wife's 10-year-old niece but his former niece and now adopted daughter remains with her natural parents. The member certifies that he is contributing \$35 a month for the support of his dependent which amount the Navy points out is over half the monetary support required to maintain the child. Because of the adoption and monetary support payments, the member claims entitlement to certain allowances at the with dependent rate such as basic allowance for quarters. The increase in the allowance due to the dependent far exceeds the monthly amount of support provided by the member. We have been informally advised

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there are also cases of unmarried members adopting relatives where the adopted children continue to live with their natural parents.

Chapter 7 of title 37, United States Code, sets out the various allowances which accrue to a uniformed service member. For purposes of these allowances, a member's adopted child under 21 years of age qualifies as a dependent if the adopted child is in fact dependent on the member, 37 U.S.C. § 401(2)(A) (1976). This statutory test of in-fact dependence has not changed since 1929 when it was added by the act of February 21, 1929, ch. 288, 45 Stat. 1254, amending section 4 of the act of June 10, 1922, ch. 210, 42 Stat. 624, 627. That statutory language was devised primarily to prevent a member from receiving increased allowances when he adopted a close relative who remained with his or her parents and the purpose of the adoption was merely to give the member a basis to claim increased allowances. 9 Comp. Gen. 299, 304 (1930).

In cases decided after the issuance of 9 Comp. Gen. 299, we explained that the member in order to receive increased allowances must show by clear and convincing evidence that the child has been legally adopted by him and that the child is in fact dependent upon him for his or her support, maintenance, and education. B-89140, October 5, 1945; and B-22984, April 2, 1942, citing B-19274, August 19, 1941. The member does not meet this burden merely by establishing that he has legally adopted a child and that his contributions to the child's support better the child's living conditions and afford the child opportunities and advantages unavailable without this support. B-14231, March 9, 1942. Rather, the member must demonstrate clearly and convincingly that he has a legally adopted child who is substantially dependent upon him for support, maintenance, and education. See B-150452, February 1, 1963.

Thus, a member must dispel any doubt before he will be entitled to increased allowances because of his adopted child. If doubt exists as to the member's entitlement, the increased allowances may not be paid. See 49 Comp. Gen. 656, 662 (1970).

We invite attention to the fact that dependency determinations involving entitlement to basic allowance for quarters for enlisted members of the uniformed services are

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to be made by the Secretary concerned or his designee and will not be reviewed by this Office except in cases involving fraud or gross negligence. See 37 U.S.C. 403(h) (1975) and Matter of Ranazzi, B-195383, November 6, 1979. Accordingly, in these cases the Secretary of the Navy or his designee should make the determination as to whether an adopted child is in fact dependent on the member.

for *Wilton J. Fowler*
Comptroller General
of the United States